

Securities and Exchange Commission

§ 240.13k-1

securities which are “section 13(f) securities” as defined in this rule, those securities shall not be deemed to be “section 13(f) securities” with respect to the controlling person, provided that such person does not otherwise exercise investment discretion with respect to accounts with fair market value of at least \$100,000,000 within the meaning of paragraph (a) of this section.

(Secs. 3(b), 13(f) and 23 of the Exchange Act (15 U.S.C. 78c(b), 78m(f) and 78w))

[43 FR 26705, June 22, 1978, as amended at 44 FR 3034, Jan. 15, 1979; 64 FR 2849, Jan. 19, 1999]

§ 240.13k-1 Foreign bank exemption from the insider lending prohibition under section 13(k).

(a) For the purpose of this section:

(1) *Foreign bank* means an institution:

(i) The home jurisdiction of which is other than the United States;

(ii) That is regulated as a bank in its home jurisdiction; and

(iii) That engages directly in the business of banking.

(2) *Home jurisdiction* means the country, political subdivision or other place in which a foreign bank is incorporated or organized.

(3) *Engages directly in the business of banking* means that an institution engages directly in banking activities that are usual for the business of banking in its home jurisdiction.

(4) *Affiliate, parent and subsidiary* have the same meaning as under 17 CFR 240.12b-2.

(b) An issuer that is a foreign bank or the parent or other affiliate of a foreign bank is exempt from the prohibition of extending, maintaining, arranging for, or renewing credit in the form of a personal loan to or for any of its directors or executive officers under section 13(k) of the Act (15 U.S.C. 78m(k)) with respect to any such loan made by the foreign bank as long as:

(1) Either:

(i) The laws or regulations of the foreign bank’s home jurisdiction require the bank to insure its deposits or be subject to a deposit guarantee or protection scheme; or

(ii) The Board of Governors of the Federal Reserve System has determined that the foreign bank or another

bank organized in the foreign bank’s home jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in its home jurisdiction under 12 CFR 211.24(c); and

(2) The loan by the foreign bank to any of its directors or executive officers or those of its parent or other affiliate:

(i) Is on substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank, its parent or other affiliate; or

(ii) Is pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank, its parent or other affiliate and does not give preference to any of the executive officers or directors of the foreign bank, its parent or other affiliate over any other employees of the foreign bank, its parent or other affiliate; or

(iii) Has received express approval by the bank supervisor in the foreign bank’s home jurisdiction.

NOTES TO PARAGRAPH (b): 1. The exemption provided in paragraph (b) of this section applies to a loan by the subsidiary of a foreign bank to a director or executive officer of the foreign bank, its parent or other affiliate as long as the subsidiary is under the supervision or regulation of the bank supervisor in the foreign bank’s home jurisdiction, the subsidiary’s loan meets the requirements of paragraph (b)(2) of this section, and the foreign bank meets the requirements of paragraph (b)(1) of this section.

2. For the purpose of paragraph (b)(1)(ii) of this section, a foreign bank may rely on a determination by the Board of Governors of the Federal Reserve System that another bank in the foreign bank’s home jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor under 12 CFR 211.24(c) as long as the foreign bank is under substantially the same banking supervision or regulation as the other bank in their home jurisdiction.

(c) As used in paragraph (1) of section 13(k) of the Act (15 U.S.C. 78m(k)(1)), *issuer* does not include a foreign government, as defined under 17 CFR

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230.405, that files a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) on Schedule B.

[69 FR 24024, Apr. 30, 2004]

§ 240.13Aa-2T Interim rule for reporting pre-enactment security-based swap transactions.

(a) *Definitions.* For purposes of this rule, the following definitions shall apply:

(1) *Clearing agency* shall have the same meaning as set forth in Section 3(a)(23) of the Exchange Act;

(2) *Exchange Act* shall mean the Securities Exchange Act of 1934, as amended;

(3) *Major security-based swap participant* shall have the meaning provided in Section 3(a)(67) of the Exchange Act and any rules or regulations thereunder;

(4) *Pre-enactment security-based swap transaction* shall mean a security-based swap that was entered into prior to, and that had not expired as of, July 21, 2010;

(5) *Security-based swap* shall have the meaning provided in Section 3(a)(68) of the Exchange Act and any rules or regulations thereunder;

(6) *Security-based swap dealer* shall have the meaning provided in Section 3(a)(71) of the Exchange Act and any rules or regulations thereunder; and

(7) *Security-based swap data repository* shall have the meaning provided in Section 3(a)(75) of the Exchange Act and any rules or regulations thereunder.

(b) *Reporting of pre-enactment security-based swap transactions.* A counterparty to a pre-enactment security-based swap transaction as provided in paragraph (c) of this section shall:

(1) Report to a registered security-based swap data repository or the Commission by the compliance date established in the reporting rules required under Sections 3C(e) and 13 A(a)(1) of the Exchange Act, or within 60 days after a registered security-based swap data repository commences operations to receive and maintain data concerning such security-based swap, whichever occurs first, the following information with respect to the pre-enactment security-based swap transaction:

(i) A copy of the transaction confirmation, in electronic form, if available, or in written form, if there is no electronic copy; and

(ii) The time, if available, the transaction was executed; and

(2) Report to the Commission, in a form and manner as prescribed by the Commission, upon request any information relating to the security-based swap transaction.

Note to paragraphs (b)(1) and (2): In order to comply with the above reporting requirements, each counterparty to a pre-enactment security-based swap transaction that may be required to report such transaction shall retain, in its existing format, all information and documents, if available, to the extent and in such form as they currently exist, relating to the terms of a pre-enactment security-based swap transaction, including but not limited to: any information necessary to identify and value the transaction; the date and time of execution of the transaction; all information from which the price of the transaction was derived; whether the transaction was accepted for clearing by any clearing agency or derivatives clearing organization and, if so, the identity of such clearing agency or derivatives clearing organization; any modification(s) to the terms of the transaction; and the final confirmation of the transaction.

(c) *Reporting party.* The counterparties to a pre-enactment security-based swap transaction shall report the information required under paragraph (b) of this section as follows:

(1) Where only one counterparty to a pre-enactment security-based swap transaction is a security-based swap dealer or a major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the transaction;

(2) Where one counterparty to a pre-enactment security-based swap transaction is a security-based swap dealer and the other counterparty is a major security-based swap participant, the security-based swap dealer shall report the transaction; and

(3) Where neither counterparty to a pre-enactment security-based swap transaction is security-based swap